



1 ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amendment)

5 401 KAR 42:316. Certification of contracting companies.

6 RELATES TO: KRS 224.60-130(3), (4), KRS 224.60-140

7 STATUTORY AUTHORITY: KRS 224.60-130(1)(a) [(2)(a)]

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(a) [(2)(a)]

9 requires the establishment of [~~fund reimbursement~~] eligibility criteria for the certification of
10 partnerships and companies that engage in corrective action.

11 Section 1. Applicability. This administrative regulation establishes criteria for
12 certification of companies that contract with eligible owners and operators to perform corrective
13 action at petroleum storage tank facilities.

14 Section 2. Certification Requirements. [~~Section 1. Applicability.~~] (1) A person who
15 contracts with an eligible owner or operator to perform corrective action shall be certified by the
16 cabinet. The cost of corrective action performed by a person not certified shall not be
17 reimbursable.

18 (2) To be eligible to contract with a petroleum storage tank owner or operator seeking
19 reimbursement from the cabinet [~~fund~~], the person shall:

20 (a) Employ [~~or contract with~~] one (1) or more individuals certified by the cabinet
21 pursuant to 401 KAR 42:314;

1 (b) Hold, in good standing, all licenses, permits and training certifications required to
2 perform corrective action services in Kentucky;

3 (c) Demonstrate to the cabinet the technical, administrative and financial capability to
4 perform and manage corrective action at a [an underground storage tank] facility; and

5 (d) Be approved in writing by the cabinet as certified to perform corrective action
6 services in Kentucky.

7 (3) This requirement shall apply to corrective actions initiated ~~[applications for assistance~~
8 ~~submitted to the cabinet]~~ on or after July 1, 1999.

9 (4) An authorized representative ~~[officer or principal]~~ of a certified company shall sign an
10 application or claim payment request in addition to ~~[submitted to the fund by, or on behalf of,]~~
11 the eligible owner or operator. The certified company shall certify that:

12 (a) The information or payment request has been reviewed and is true and correct; and

13 (b) Each claim payment cost is reasonable, necessary, and was performed in compliance
14 with 401 KAR Chapter 42.

15 Section 3 ~~[Section 2]~~. Application Requirements. (1) An applicant for company
16 certification shall submit:

17 (a) A completed "Certified Company or Partnership Application" DEP 6073 (January
18 2006) ~~[Certified Company and Partnership Application Form]~~;

19 (b) Verification of the employment ~~[or contracting]~~ of one (1) or more individuals
20 certified pursuant to 401 KAR 42:314;

21 (c) As references, the names and addresses of three (3) previous clients for whom
22 environmental remediation has been performed by the company. If none, the applicant shall

1 provide the names and addresses of three (3) previous or current clients of the individual
2 certified pursuant to 401 KAR 42:314; and

3 (d) A list of the names and address of officers and principals of the applicant, and if
4 applicable, a list of all stockholders.

5 (2) Cabinet staff may inspect facilities of the applicant if necessary to verify information
6 in the application or to assist in the evaluation of the applicant's capabilities.

7 (3)[(a)] The cabinet may require additional information and documentation if necessary
8 to determine the applicant's capabilities.

9 ~~[(b) The request for additional information and documentation shall be made by certified~~
10 ~~mail.~~

11 ~~(c) The applicant shall submit the additional information within thirty (30) days of receipt~~
12 ~~of the request.]~~

13 (4) An application for certified company status shall be denied if the applicant:

14 (a) Fails to provide the information required in the application or in this administrative
15 regulation;

16 (b) Does not meet the requirements of subsection (1) of this section;

17 (c) Does not hold, in good standing, all licenses, permits and training certifications
18 required to perform corrective action services in Kentucky;

19 (d) Fails to allow ~~[the]~~ cabinet staff to access company records for audit purposes
20 pursuant to 401 KAR 42:335; ~~[inspect its facilities;]~~

21 (e) Fails to provide additional information and documentation requested by the cabinet;

22 (f) Fails to demonstrate the technical, administrative and financial capability to perform
23 and manage corrective action at underground storage tank facilities;

1 (g) Provides false or misleading information in the application;

2 (h) Has an officer, director, principal, or stockholder who has had a certification, granted
3 pursuant to 401 KAR 42:314, revoked or suspended; ~~or~~

4 (i) Has an officer, director, principal, or stockholder who was an officer, director,
5 principal, or stockholder in a certified company, previously having had its certification revoked
6 or suspended; or [-]

7 (j) Fails to maintain general and professional liability insurance and pollution/property
8 coverage.

9 (5) An applicant whose application for company certification is denied may appeal the
10 determination by requesting a reconsideration or hearing pursuant to KRS 224.10-420, KRS
11 224.10-440 and 401 KAR 100:010. ~~[401 KAR 42:320.]~~

12 (6) The cabinet shall issue a certificate to a qualifying applicant, indicating certification
13 pursuant to this administrative regulation. ~~[A certification shall be renewed biannually.]~~

14 Section 4. Certification and Renewal Procedures. (1) The cabinet shall issue a certificate
15 to each company that successfully complies with this administrative regulation. The certificate
16 shall be renewed two years from the date of certification. The certified company shall be
17 responsible for renewing certification prior to expiration.

18 (2) An application for renewal shall be submitted to the cabinet on the "Certified
19 Company or Partnership Application", DEP 6073 (January 2006).

20 (3) Actions performed by a certified company, under contract with an owner or operator,
21 that fails to renew its certification shall be ineligible for reimbursement of corrective action costs
22 incurred after the expiration date.

1 Section 5 [~~Section 3~~]. Revocation or Suspension of Certification. (1) A certification
2 issued pursuant to this administrative regulation shall be revoked or suspended if the certified
3 company:

4 (a) Or its employee or agent knowingly submits false information, documentation, or a
5 false payment request to an owner, operator, or the cabinet;

6 (b) Has permitted an employee, agent or subcontractor to violate a provision of 401 KAR
7 Chapter 42, or to perform corrective action in violation of the standards of the State Fire Marshal
8 or the cabinet;

9 (c) Has failed to comply with the terms set forth in 401 KAR 42:335;

10 (d) Has negligently, incompetently, recklessly or intentionally violated a provision of this
11 chapter or a required federal, state or local regulation, code or standard relating to corrective
12 action;

13 (e) Has obtained the certification through fraud or misrepresentation; or

14 (f) Fails to perform a corrective action in a manner consistent with state or federal laws
15 and regulations for safety or corrective actions, or fails to perform a corrective action consistent
16 with generally acceptable professional standards.

17 (2) The cabinet [~~secretary~~] shall issue a letter by certified mail notifying a noncompliant
18 certified company that its certification has been revoked or suspended by action of the cabinet.

19 (3) A person whose certificate is suspended or revoked may appeal the determination by
20 requesting a hearing pursuant to KRS 224.10-420, KRS 224.10-440 and 401 KAR 100:010. [~~401~~
21 ~~KAR 42:320.~~]

1 Section 6 [~~Section 4~~]. Incorporation by Reference. (1) "Certified Company or Partnership
2 Application", DEP 6073 (January 2006) [~~"Certified Company and Partnership Application~~
3 Form" (October 1998)] is incorporated by reference.

4 (2) This material may be inspected, copied, or obtained, subject to applicable copyright
5 law, at the Underground Storage Tank Branch, 81 C. Michael Davenport Boulevard, Frankfort,
6 Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., excluding state holidays and may
7 also be obtained on the Division of Waste Management's web page located at
8 www.waste.ky.gov.

401 KAR 42:316 is approved for filing.

4-12-2006

Date

John W. Clay

John W. Clay, Deputy Secretary
Environmental and Public Protection Cabinet

for

LaJuana S. Wilcher, Secretary
Environmental and Public Protection Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006 at 10:00 AM (Eastern Time) at the Capital Plaza Tower Auditorium, 500 Mero Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Bruce Scott, P. E., Director
Division of Waste Management
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Frankfort, KY 40601
Telephone: (502) 564-6716 Fax (502) 564-4049
Email: Bruce.Scott@ky.gov

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 42:316

Contact person: Bruce Scott, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria for the certification of companies that contract with eligible owners and operators to perform corrective action at petroleum storage tank facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish criteria for the certification of companies that contract with eligible owners and operators to perform corrective action at petroleum storage tank facilities. This is required to receive reimbursement from the Petroleum Storage Tank Environmental Assurance Fund (PSTEAF).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms by establishing the criteria for certification of companies that contract with eligible owners and operators to perform corrective action at petroleum storage tank facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist by establishing the certification criteria for companies that contract with eligible owners and operators to perform corrective action at petroleum storage tank facilities.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment reflects the cabinet reorganization, changes certification renewal procedures, and updates incorporated material.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reflect the cabinet reorganization and make changes to the regulation that will update the program.

(c) How the amendment conforms to the context of the authorizing statutes: This amendment conforms by establishing the certification criteria for companies who contract and perform corrective action for a release from a petroleum storage tank.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist by establishing the certification criteria for companies who contract and perform corrective action for a release from a petroleum storage tank.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect those individuals that own and operate underground storage tanks in the Commonwealth of Kentucky, approximately 13,400. UST contractors that operate in the Commonwealth of Kentucky will also be affected by this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This amendment updates the incorporated materials for UST systems. The cabinet expects no significant impact from this amendment.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no costs associated with implementation of this administrative regulation.

(b) On a continuing basis: There will be no additional costs associated with the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is funded through two Federal grants and the collection of the petroleum environmental assurance fee as described in KRS 224.60-145. No additional funding will be required.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no need for an increase in funding or fees to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.)

No tiering is applied. This administrative regulation applies to all owner and operators of USTs. To apply tiering to the amendment would unduly regulate some entities with USTs while not regulating others.

FISCAL NOTE ON LOCAL GOVERNMENT

Administrative Regulation #: 401 KAR 42:316

Contact person: Bruce Scott, Director

Phone Number: (502) 564-6716

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes _____ No __X__ If yes, complete question 2 to 4. If no, you do not need to file this form.

2. State what unit, part, or division of local government this administrative regulation will affect.

This amendment may affect local governments that own or operate USTs.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation.

This amendment relates to the agents of local government that own or operate USTs. KRS 224.60-105 and 224.60-120(a) authorize the promulgation of this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No effect.

Expenditures (+/-): No effect.

Other Explanation: The cabinet expects no significant impacts from this administrative regulation.

**DETAILED SUMMARY OF MATERIAL
INCORPORATED BY REFERENCE IN
401 KAR 42:316**

I. This administrative regulation incorporates by reference the “Certified Company or Partnership Application”, DEP 6073 (January 2006). This document is submitted by companies performing corrective action to become certified by the Underground Storage tank Branch.

This document consists of 13 pages.